

Jicarilla Apache Nation

Indian Affairs Committee Hearing
Buffalo Thunder Resort & Casino, Pueblo of Pojoaque
December 9, 2013

Indian Gaming

- Brief History of Indian Gaming
- Tribal Sovereignty
- State Interests
- Federal Trust Responsibility

Brief History of Indian Gaming

- Indian Tribes have always engaged in gaming activities traditionally and culturally
- Indian gaming operations started out in small trailers and mobiles with meager gaming like bingo and pull tabs
- Indian gaming on Indian reservations have been historically conducted without state interference
- Not until high-stakes gaming or Las Vegas style gaming began to occur reservations did states begin to raise concerns and attempt to prohibit gaming activities

What are the state concerns?

- The states interests were tested in the U.S. Supreme Court in the pinnacle case of California v. Cabazon.
- The interests primarily for the state being: protecting the states from the increase of crime and things that are often too many times associated with gaming, like gangs, prostitution, drugs and government corruption.

Tribal Sovereignty

- California v. Cabazon (1987).
- The State of California asserted authority to prohibit gaming through the passage of criminal statutes seeking to prevent the infiltration of organized crime. The state asserted jurisdiction over the Cabazon on grounds that since the State of California didn't allow gaming in the state, the Cabazon Indians could not game on reservation lands. However, the Supreme Court ruled in favor of Cabazon, because despite assertions the state prohibited gaming, the state in fact allowed gaming operations and promoted gaming operations. Therefore, the Supreme Court ruled California could not assert jurisdiction over Indian tribes because the state regulated gaming rather than prohibiting gaming. Thus, the Indian tribes' secured a victory in the Supreme Court which recognized and protected tribal sovereignty.

Seminole Tribe v. Florida

- Florida was successful in preventing the Seminole from being sued under the IGRA when they refused to enter into Class III gaming compacts when the Supreme Court ruled that the 11th amendment (sovereign immunity) of the U.S. Constitution protected states from being sued by Indian tribes.

Federal Trust Responsibility Origins

- Cherokee Nation v. Georgia (1831)
- “They[the Indian tribes] may, more correctly, perhaps, be denominated domestic dependent nations...Their relation to the United States resembles that of a ward to his guardian.”
- “They look to our government for protection; rely upon its kindness and its power; appeal to it for relieve to their wants; ...[and] any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory and an act of hostility.”

Federal Trust Responsibility

- Federal Trust responsibility is to fulfill obligations to Indian tribes for land cessations including, housing, health care, education and reservations.
- Federal Trust responsibility exists to protect the Indian tribes from state intrusion to tribal lands and jurisdiction. Tribes have the ability to not rely on federal government, who has failed miserably failed in fulfilling the trust responsibility and meeting their obligations.
- The Cabazon decision lead to the development of three classes of gaming under the IGRA. Class I and Class II type gaming that need no state consent. Class I gaming is the traditional types of gaming that Indian tribes have used since time in memorial. Class II gaming is like the bingo and keno machines. Class III gaming is considered the Las Vegas style gaming or high stakes gaming.

Indian Gaming Regulatory Act (IGRA) 101

- “I firmly believe that we now stand at a crossroads, at a point where we may seize the opportunity to acknowledge the Indians’ unequivocal right to self-determination and invite the Indian tribes into the American main-stream...[t]he possibility [exists] that the tribes can fully participate in our economic prosperity while they retain...their rights to decide to what extent and in what manner they choose to participate.”
 - 134 Congressional Record 24,027 (1988) Senator Daniel Evans (R), explaining why the Indian Gaming Regulatory Act should be enacted.

The United States Congresses Policy passage of the Indian Gaming Regulatory Act 25 U.S.C. § 2701:

- 1) To provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency and strong tribal governments;
- 2) To provide a statutory bases for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and
- 3) To declare that the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming to protect such gaming as a means of generating revenue.

Class III Compact Negotiations alternative to Federal Approval

- Class III Gaming Compacts are contemplated in the IGRA as an alternative to sole federal review and approval of Class III Indian Gaming.
- Gaming Compacts allow tribal interests and state interests to be addressed.
- Federal review and approval is long and expensive under IGRA.